STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 98-C-1357 - Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements.

RECOMMENDED DECISION ON MODULE 3 ISSUES

BY

ADMINISTRATIVE LAW JUDGE JOEL A. LINSIDER

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APPEARANCES: See Appendix A

JOEL A. LINSIDER, Administrative Law Judge:

INTRODUCTION AND PROCEDURAL HISTORY

In September 1998, the Commission announced its intention to undertake, beginning in January 1999, a comprehensive reexamination of the unbundled network element (UNE) rates of Verizon New York Inc. f/k/a Bell Atlantic-New York,[1] as set in the First Network Elements Proceeding. (That case is referred to as "the First Elements Proceeding" or, simply, "the First Proceeding.")[2] This ensuing case has had a

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[1] Cases 95-C-0657 et al., First Network Elements Proceeding, Order Denying Motion to Reopen Phase 1 and Instituting New Proceeding (issued September 30, 1998). Except where clarity otherwise requires, Verizon is referred to as such throughout this recommended decision, even in references to matters that predate the name.

[2] The First Elements Proceeding comprised four phases, designated "Resale" and Phases 1, 2, and 3, as follows. Resale: Opinion No. 96-30 (issued November 27, 1996). Phase 1 (network elements generally): Opinion No. 97-2 (issued April 1, 1997); rehearing, Opinion No. 97-14 (issued September 22, 1997). Phase 2 (primarily Operations Support Systems and Nonrecurring Charges): Opinion No. 97-19 (issued December 22, 1997); rehearing, Opinion No. 98-13 (issued June 8, 1998). Phase 3 (various issues, including collocation): Opinion No. 99-4 (issued February 22, 1999); rehearing, Opinion No. 99-9 (issued July 26, 1999). The phases and their opinions are referred to as "Phase 1," "Phase 2 Rehearing Opinion," etc., without further specification.

long and complex procedural history, including various interim measures and extensions of deadlines in response to pertinent federal court decisions. Only the broad outlines of that history will be recounted here; further details will be set forth as needed in the context of specific issues to which they may be pertinent.

On the basis of an initial collaborative process facilitated by Department of Public Service Staff, the proceeding was divided into three modules: Directory Database (DDB); Collocation; and Unbundled Network Elements (UNEs) generally.[3] The first two modules culminated in Commission decisions issued during the first half of last year.[4] During the course of the proceeding, special expedited tracks were established for consideration of certain digital subscriber line (DSL) rates and line sharing rates; those, too, have been concluded.[5] In several instances, described below, issues raised in those earlier modules and tracks gave rise to matters considered further here.

Initial testimony in Module 3 was originally scheduled to be filed in December 1999, with hearings to begin in February 2000. For a variety of reasons, including the broad scope of the proceeding, the need to take account of actions by the FCC and of a federal court decision, and the strike by Verizon employees during August 2000, that schedule was extended on

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[3] Case 98-C-1357, Ruling on Scope and Schedule (issued June 10, 1999).

[4] Module 1 (DDB): Case 98-C-1357, Opinion No. 00-2 (issued February 8, 2000); Order on Petitions for Rehearing (issued June 29, 2000). Module 2 (Collocation): Case 98-C-1357, Opinion No. 00-8 (issued June 1, 2000); Order Denying Petitions for Rehearing of Opinion No. 00-08 (issued January 4, 2001).

[5] DSL: Case 98-C-1357, Opinion No. 99-12 (issued December 17, 1999); Order Denying Petitions for Rehearing (March 17, 2000). Line Sharing: Case 98-C-1357, Opinion No. 00-7 (issued May 26, 2000); Order Denying Petition for Rehearing (issued October 3, 2000).

several occasions, and hearings were ultimately held in December 2000. The only one of these factors that warrants specific note here is the decision of the United States Court of Appeals for the Eighth Circuit to vacate 47 C.F.R §51.505(b)(1), a portion of the FCC's rules central to the requirement that UNEs be costed and priced on the basis of Total Element Long-Run Incremental Cost (TELRIC).[6] (That decision is now stayed pending Supreme Court review; these matters are discussed further in the next section.)

In view of the Eighth Circuit's ruling and the uncertainty it was said to create with regard to the proper costing standard, Verizon urged suspension of the proceeding. All other parties opposed any suspension; they questioned, among other things, the import of the court's decision in jurisdictions beyond the Eighth Circuit and argued (contrary to Verizon's view) that Verizon in any event remained bound to TELRIC pricing by conditions imposed by the FCC in approving the merger of its predecessor companies.[7] I declined to suspend the proceeding, citing "(1) the time it likely will take for [the] uncertainties to be resolved, (2) the effect of the FCC's merger conditions[8] during that interval, and (3) the Eighth Circuit's sustaining of forward-looking pricing [as a matter of principle, despite its rejection of the specific version of forward-looking pricing embodied in the rule it had vacated]."[9] I recognized, however, the possible need to reexamine the course of the proceeding in the event circumstances changed.

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6 Iowa Utilities Bd. et al. v. FCC, 219 F.3d 744(8th Cir. 2000).

7 CC Docket No. 98-184, GTE Corporation and Bell Atlantic Corporation, Memorandum Opinion and Order (rel. June 16, 2000), FCC 00-221 (GTE/BA Order).

8 This referred to conditions imposed by the FCC on the NYNEX/Bell Atlantic merger as well as the Bell Atlantic/GTE merger just noted.

9 Case 98-C-1357, Ruling on Module 3 Schedule (issued August 24, 2000), p. 7.

Verizon sought reconsideration of that ruling, in part on the grounds that the FCC had recently construed its earlier order approving the NYNEX/Bell Atlantic merger in a manner assertedly suggesting that the Bell Atlantic/GTE Order likewise did not require TELRIC pricing as a merger condition.[10] I declined to reconsider, noting the significant difference in wording between the two merger orders and seeing no need to change my conclusion that "what the [Bell Atlantic/GTE] order means may ultimately be a matter for the FCC and the courts to decide, but for present purposes [it] provides an adequate basis for concluding that Verizon remains obligated, notwithstanding the Eighth Circuit's decision, to continue pricing UNEs on a TELRIC basis and will remain so obligated at least until the Eighth Circuit's decision is sustained or becomes non-appealable."[11] The proceeding went forward on that basis.

Initial testimony was filed (on February 7, 2000 and, with respect to some issues, on February 22, 2000[12]) by Verizon, jointly by AT&T and WorldCom, Inc., jointly by Covad Communications Company and Rhythms Links Inc., and by FairPoint Communications Corp. Responsive testimony, due June 26, 2000, was filed by Verizon, AT&T (alone), WorldCom (alone), AT&T/WorldCom (jointly), Rhythms/Covad (jointly), the CLEC

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[10] Verizon cited the FCC's dismissal of complaints that Verizon had violated such a commitment made in connection with the NYNEX/Bell Atlantic merger. File No. E-98-05, AT&T Corporation v. Bell Atlantic Corporation, and File No. E-98-12, MCI Telecommunications Corporation et al. v. Bell Atlantic Corporation, Memorandum Opinion and Order (rel. August 18, 2000).

[11] Case 98-C-1357, Ruling Denying Request for Reconsideration (issued September 18, 2000), p. 4. The FCC staff has since stated its view that the merger condition has this effect. Letter from Dorothy T. Attwood, Chief, Common Carrier Bureau, to Michael Glover, Verizon Communications, Inc. (September 22, 2000).

[12] Portions of the February 22 testimony were admitted as part of the line sharing track previously referred to.

Coalition,[13] the CLEC Alliance,[14] Z-Tel Communications, Inc., Cablevision Lightpath, Inc., the Cable Television and Telecommunications Association of New York, Inc. (CTTANY), and the United States Department of Defense and all Federal Executive Agencies (Federal Agencies). Rebuttal testimony, due October 19, 2000, was filed by Verizon, AT&T/WorldCom, Rhythms/Covad, the CLEC Coalition, FairPoint, and DOD/FEA. In addition to these principal filings, supplemental or supplemental responsive or rebuttal testimony on particular issues was submitted by Verizon (May 23, September 11, September 25, November 8, November 22, and December 5), Rhythms/Covad (November 13), and CTTANY (November 29). The use made of electronic information transfer among parties in this proceeding is noteworthy and contributed greatly to the efficient development of the record; among other things, the very extensive evidence submitted by Verizon and by AT&T/WorldCom was posted on websites from which it could be downloaded (with passwords required for proprietary information).

An attorneys' prehearing conference was held in New York City on November 30, 2000 for the purpose of introducing pre-filed testimony into the record via affidavit, subject to later cross-examination of witnesses as to whom cross had not been waived. Hearings were held in Albany on December 7, 8, 12, 13, 15, 19, and 20,[15] and an on-the-record post-hearing attorneys' teleconference was held on December 21. Following the hearings, Staff of the Department of Public Service posed a

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[13] The CLEC Coalition comprises Allegiance Telecom of New York, Inc.; Intermedia Communications Inc; and NEXTLINK New York, Inc.

[14] The CLEC Alliance comprises CoreComm New York, Inc.; CTSI, Inc.; Mpower Communications, Inc.; Network Plus, Inc.; RCN Telecom Services, Inc.; and Vitts Networks, Inc.

[15] The parties demonstrated creativity and mutual consideration in devising a schedule that permitted witnesses to plan on appearing on specific days and otherwise structured the complex proceeding in a manner convenient to all.

series of questions to Verizon and AT&T; their responses have been admitted as exhibits 457 and 458 respectively.

The record comprises 4,954 pages of stenographic transcript (numbered 1,150-6,103) and 159 exhibits (numbered 301-459).[16] The following pages of the transcript have been provisionally designated as proprietary: 1620-1877 (public version at 1362-1617), 2067-2216 (public version at 1917-2065), 3110-3189 (public version at 2832-2911), 3813-3958 (public version at 3666-3811), 3984-4008 (public version at 4009-4032) 4059-4135 (public version at 4137-4204A), 4255-4302 (public version at 4206-4253), 4432-4453 (public version at 4456-4476), 4558-4576 (public version at 4541-4557). Provisionally proprietary exhibits are 317P, 320P, 324P, 326P, 328P, 330P, 333P, 339P, 358P, 367P, 370P, 375P, 381P-389P, 392P, 411P, 412P, 414P, 417P, 418P, 448P, 453P, and 455P. My ruling on the final status of the provisionally protected material is pending.

Initial briefs, due February 16, 2001, were filed by Verizon, AT&T, CTTANY, Lightpath, the CLEC Alliance, the CLEC Coalition, the Federal Agencies, FairPoint, Rhythms/Covad, and Z-Tel. Reply briefs, due March 14, 2001, were filed by those parties except for Z-Tel.

This recommended decision considers all issues except those related to conduit rentals. Conduit rentals will be the subject of a supplemental recommended decision.

LEGAL CONTEXT; THE STATUS OF TELRIC

This case, like the First Elements Proceeding, has been litigated on the basis of the Federal Communications Commission's total element long-run incremental cost (TELRIC) standard despite the legal cloud cast over the standard by a federal court decision. Because of the importance of the standard, its background, nature, and current status warrant review.

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[16] Exhibit 459, Verizon's supplemental response to interrogatory CTTANY-VZ-52, has not previously been formally admitted; I hereby admit it.

Under §252(d)(1) of the Telecommunications Act of 1996 (the 1996 Act),

> Determinations by a State commission of the just and reasonable rate ... for network elements ...--
>
> (A) shall be--
>
> (i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the ... network element... and
>
> (ii) nondiscriminatory, and
>
> (B) may include a reasonable profit.

In its regulations and order implementing the 1996 Act,[17] the FCC determined that these pricing provisions should be carried out by setting prices on the basis of each element's TELRIC, along with a reasonable allocation of forward-looking common costs.

The New York Commission in Phase 1 of the First Elements Proceeding described TELRIC in the context of other costing methods.[18] It noted that TELRIC was a term coined by the FCC to describe the version it was adopting of the more familiar total service long-run incremental cost (TSLRIC) method. An analysis of TSLRIC amounts to an estimation of long-run incremental cost (LRIC) where the increment of service that is studied is the total demand for the service. LRIC, in turn, measures incremental cost (i.e., the cost of producing an additional quantity of a good or service) over a period long

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[17] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket Nos. 96-98 and 95-105, First Report and Order (rel. August 8, 1996)(the Local Competition Order).

[18] Phase 1 Opinion, pp. 9-15.

enough so that all of the firm's costs become variable or avoidable.

All of the foregoing costing methods are forward-looking, taking account of the costs to be incurred in the future, rather of than embedded, historical costs. In defining the TELRIC method, the FCC added the specification that costs "should be measured based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of the incumbent [local exchange carrier's] wire centers."[19] This is the so-called "scorched node" premise, which takes as a given only the location of the incumbent local exchange carrier's [LEC's] existing wire centers and otherwise contemplates a network designed in accordance with the most efficient technology available, regardless of the technology actually deployed. It has generated considerable controversy, much of it more heated than illuminating, over the legality and wisdom of setting UNE rates on the basis of "hypothetical," or, even, "fantasy" networks.

After the start of the First Proceeding, the FCC's TELRIC rules were stayed and ultimately vacated by the Eighth Circuit Court of Appeals on the grounds that the FCC had exceeded its authority in adopting them.[20] The case nonetheless proceeded to decision on a TELRIC basis, inasmuch as all parties' studies had been based on TELRIC; even Verizon, which objected to TELRIC and reserved its rights to submit other studies if TELRIC were overturned, had submitted a TELRIC study in view of the FCC's regulations. The Commission noted that "TELRIC is certainly a reasonable approach to use, though just as certainly not the only one; and, as [Verizon] recognizes, as a practical matter there is no alternative other than the very

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[19] 47 C.F.R. §51.505(b)(1).

[20] Iowa Utilities Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997).

unattractive one of temporary rates while a lengthy new case is litigated."[21]

The United States Supreme Court eventually reversed the Eighth Circuit on the issue of FCC authority, reinstated the rules, and remanded for consideration of the substantive challenges that had been raised to TELRIC pricing.[22] That remand eventuated in an Eighth Circuit decision that again overturned portions of the FCC's rules, including the TELRIC definition in §51.505(b)(1), cited above, this time on the grounds that it was inconsistent with the provisions of the 1996 Act requiring UNE prices to be based on the cost of providing the elements. In the Eighth Circuit's judgment, "Congress was dealing with reality, not fantasizing about what might be," and basing prices on the hypothetical network of TELRIC violated Congress's intent that the costs to be taken into account are those of "providing the actual facilities and equipment that will be used by the competitor (and not some state of the art presently available technology ideally configured but neither deployed by the ILEC nor to be used by the competitor."[23] The Eighth Circuit added, however, that it did not reject the use of forward-looking costs in the setting of UNE rates; and it declined to reach the claim that TELRIC rates would amount to an unconstitutional taking of the ILEC's property, regarding that claim as unripe for decision until actual rates could be evaluated. The Supreme Court has agreed to review the Eighth Circuit's determination, and the TELRIC rule at issue remains in effect pending that review.

Following the Eighth Circuit's decision last summer, Verizon moved to stay the proceeding in view of the uncertainty over the costing standard that would ultimately apply; CLECs generally opposed the motion. As recounted above, I denied the motion and its later renewal, and the proceeding went forward on a TELRIC basis.

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[21] Phase 1 Opinion, p. 15.

[22] AT&T Corp. v. Iowa Utilities Bd., 525 U.S. 366 (1999).

[23] Iowa Utilities Bd. v. FCC, 219 F.3d 744 (8th Cir. 2000).

At case end, Verizon continues to stress the uncertainty associated with the TELRIC standard pending Supreme Court review. It contends that the existing rates are reasonable, TELRIC-based, and pro-competitive (indeed, that many are too low), and it asks the Commission to forbear from setting new UNE rates until the applicable standard is clarified by the Supreme Court and parties have had the opportunity to submit new (presumably non-TELRIC) studies if warranted by the Supreme Court's decision. Other parties, once again, favor having the case decided.

I see no more need now to recommend deferral of a decision than I did earlier to cut off the litigation. The TELRIC rules remain in force, and the proceeding has gone forward on a TELRIC basis; the Supreme Court's decision cannot be predicted and is unlikely to be rendered before the end of the year at the earliest; and the issues in the case are ripe for decision. That decisional process should go forward.

One further aspect of the TELRIC background should be briefly noted. Section 254 of the 1996 Act directed the FCC to establish a universal service support system to ensure the delivery of affordable telecommunications services. In the ensuing proceeding (the Universal Service Proceeding), the FCC ultimately adopted a forward-looking cost model to be used in determining an eligible carrier's level of universal service support. The FCC adopted its cost model in two stages: in the first stage, it adopted the Model Platform, which contains the fixed aspects of the model[24]; in the second stage, it selected the input values for the Model Platform.[25] Parties occasionally cite the FCC's Universal Service Proceeding determinations, and the presentations and analysis there are sometimes instructive; but it is important to keep in mind the FCC's caution that its model "was developed for the purpose of determining federal

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[24] Federal-State Joint Board on Universal Service et al., CC Docket Nos. 96-45, 97-160, Fifth Report and Order (rel. October 28, 1998).

[25] Id., Tenth Report and Order, (rel. November 2, 1999).

universal service support, and it may not be appropriate to use nationwide values for other purposes, such as determining prices for unbundled network elements."[26]

OVERVIEW OF PARTIES' POSITIONS

To convey a general sense of the issues to be dealt with in this proceeding, this section of the Recommended Decision describes without comment the overall contours of each party's position. Points referred to here will be treated in greater detail below.[27]

Verizon

As already noted, Verizon's primary recommendation is that the Commission forbear from setting new rates now given the uncertain standing of the TELRIC method for analyzing costs. Short of that, it would have the Commission set new rates on the basis of its studies, which are said to be forward-looking (but not speculative or based on "fantasy networks"), grounded in actual data derived from Verizon's records, transparent, fully documented, and compliant with TELRIC. (Despite that compliance with TELRIC, Verizon reserves its objections to that method, expressing agreement with the Eighth Circuit that TELRIC is "unlawful and inappropriate.") In contrast to its own studies, the costing model sponsored by AT&T and WorldCom continues to suffer, according to Verizon, from flaws associated with its predecessor Hatfield Model, as described by the Commission in Phase 1 of the First Proceeding.

Referring to what it calls the "scare campaign in which AT&T has blamed regulators for its own business failures and has threatened to exit the market if its demands for UNE rate reductions are not met," Verizon attributes AT&T's difficulties to matters other than UNE rates and notes, in any

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[26] Id., ¶32.

[27] Arguments made by more than one party are not necessarily attributed to all parties making them, but all briefs have been fully considered.

event, that the Commission's task is to protect competition, not competitors.[28] It argues as well that true competition must be facilities-based and that artificially low UNE rates "will only prolong the CLECs' counterproductive use of--as opposed to interconnection with--Verizon's network."[29] It insists that

> the Commission's goal in this proceeding should not simply be to reduce rates, or to artificially stimulate any and all competitive entry. Rather, the Commission should seek to provide appropriate incentives for true facilities-based competition by avoiding any understatement of UNE costs. Verizon's studies provide the best basis for achieving that objective."[30]

AT&T

Jointly with WorldCom, AT&T sponsored a costing model known as HAI 5.2-NY (HAI Model). The model, described in greater detail below, is a successor to the Hatfield Model sponsored by AT&T and WorldCom (then MCI) in the First Elements Proceeding. AT&T identifies two ways in which the Commission can set proper rates in this proceeding: either by starting with Verizon's cost study and substantially adjusting it in accordance with AT&T's proposals, or by using the HAI study as the basis for rate setting. Recognizing that no party's cost calculations will reflect absolute mathematical certainty, AT&T contends that the two approaches it advocates--the Verizon studies properly adjusted and the HAI Model results--tend to produce results that converge.[31]

AT&T devotes considerable attention to the broader context in which UNE rates must be set. It contends that

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[28] Verizon's Initial Brief, p. 3.

[29] Id.

[30] Id., p. 34 (emphasis in original).

[31] AT&T notes in this regard that the Commission's decision in Phase I grew out of what the Commission found to be the convergence between the Hatfield Model and Verizon's studies when the inputs to each were properly adjusted.

competition in New York's local telephone markets is limited and fragile and will be undermined by UNE rates that exceed their costs and permit Verizon to extract excessive revenues from local market entrants, to the detriment of customers for both local and long distance service. It argues that UNE price increases could be justified here only if the prices set in the First Proceeding were erroneously low or if the underlying costs had increased since 1997; according to AT&T, neither of these is the case. The first premise, it contends, is undermined by Verizon's robust financial performance in recent years, while the second is belied by generally declining costs in the telecommunications industry. On the contrary, it sees a need for immediate reduction in existing UNE rates.

AT&T charges that the evidence in the case shows, among other things, that Verizon's existing loop rates exceed forward-looking costs by about $7.70 per month in Manhattan and about $6.60 per month in the major cities rate zone[32] and that switching rates exceed forward-looking economic costs by at least 70%. It is not surprised by the statement of Verizon's co-chief executive that "'whoever is buying'" AT&T's basic local service package 'knows they're not making any money on it.'"[33] AT&T contends that Verizon recognizes that the local exchange telecommunications business in New York cannot be profitable for CLECs under Verizon's existing UNE rates but that it nevertheless proposes substantial increases in those rates.

AT&T attributes Verizon's aggressiveness in seeking increased UNE rates to its having "eaten the carrot" of FCC approval under §271 of the 1996 Act for its entry into the long distance market. Even before that approval had been granted, it maintains, Verizon cooperated only grudgingly in efforts to erode its local market dominance, but the granting of §271 approval accounts for Verizon's now "unconstrained

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[32] Loop rates are deaveraged into three zones: Manhattan, major cities, and the rest of the state.

[33] AT&T's Initial Brief, p. 2, citing a newspaper article that so quotes the Verizon officer (emphasis added by AT&T).

aggressiveness"[34] in proposing in this case methodological innovations that tend to increase its calculated UNE costs.

CLEC Alliance

The CLEC Alliance likewise sees no basis for increased UNE rates, citing Verizon's robust finances and denying any cost increases since 1997. Contending that the existing rates are too high, it warns that any increase would have a substantial negative effect on competition, noting recent bankruptcies and lesser financial problems of various CLECs. It asserts that the purpose of TELRIC is to overcome barriers to market entry by preventing the ILEC from recovering all costs associated with its existing monopoly network, and it argues as well that because the ILECs have greater access to the pertinent cost information, they bear the burden of proving the nature and magnitude of the forward-looking costs they seek to recover. The CLEC Alliance denies that Verizon has sustained that burden of proof, contending that the large volume of material submitted by Verizon is "next to useless for purposes of conducting a detailed examination and analysis."[35] It charges that Verizon has continued the use of assumptions rejected by the Commission in the First Proceeding and changed other assumptions without explaining why.

Disputing any suggestion that Congress intended UNE-based competition as a mere transition to facilities-based competition, the CLEC Alliance contends that the main point of the 1996 Act is to lower entry barriers to competition of all sorts. It asserts that even under existing UNE rates, facilities-based competition exceeds UNE-based competition by nearly five to one, but that local competition remains generally "a fragile patchwork concentrated in small niches and submarkets."[36]

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[34] Id., p. 8.

[35] CLEC Alliance's Initial Brief, p. 7.

[36] CLEC Alliance's Reply Brief, pp. 6-7.

In support of its positions, the CLEC Alliance presented a comprehensive study of Verizon's costs and critique of its proposals, prepared by QSI Consulting.[37] It suggests rates could properly be set on the basis of Verizon's studies as adjusted by QSI.

CLEC Coalition

The CLEC Coalition maintains that even though regulators have held the New York market to meet the minimum standards of §271 of the 1996 Act, the market cannot be considered competitive "in any true sense".[38] It cites Verizon's continued market power and the consequent need for continued regulatory oversight, including with respect to UNE rates.

The CLEC Coalition directs most of its attention to Verizon's method for estimating expenses. It contends that even if Verizon's basic method is sustained, proper adjustments to make its expense factors more forward-looking would show its proposed rates to be inconsistent with TELRIC. It characterizes its own adjustments as a starting point to which those advocated by other parties should be added.

WorldCom

In an introductory section of its brief captioned "The Battle of New York," WorldCom maintains that "competition in the local exchange market in New York is at a critical crossroads."[39] Like AT&T, it asserts that Verizon is attempting to increase the rates for network elements in order to exacerbate the price squeeze applied to actual and would be UNE-based competitors. It, too, cites Verizon's co-CEO's statement that UNE-based competitors are not making any money, and it warns that "unless unbundled networking elements are significantly reduced to reflect true economic cost, so that meaningful profits can be

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[37] Exhibits 355-357, 358P, and 359.

[38] CLEC Coalition's Initial Brief, p. 2.

[39] WorldCom's Initial Brief, p. 2.

earned, local competition in New York is not sustainable."[40] It asserts that costs, if anything, have fallen since UNE-rates were last set; that Verizon's having secured §271 approval has given it an added incentive to impose a price squeeze on competing carriers, and that the methodological refinements to which Verizon attributes much of its proposed increase in rates are abusive, distorting, or contrary to TELRIC. It charges generally that Verizon's studies are based on embedded costs and current labor times and thereby attempt to recover the costs associated with its inefficient current operations. TELRIC pricing, it continues, required that these embedded inefficiencies be eliminated and, beyond that, that additional forward-looking adjustments be made to fully capture the savings associated with advanced technology.[41] In view of the cost savings associated with next-generation networks, MCI urges that the Commission "substantially reduce Verizon's proposed cost recovery, rather than merely tinkering with or providing token one-time adjustments to current embedded costs."[42] It defends UNE-based competition, disputing Verizon's emphasis on facilities-based competition, and contends New York's UNE rates exceed those in other pro-competitive states.

WorldCom devotes its briefs to critiquing Verizon's studies. It does not discuss in any detail the HAI study it co-sponsored with AT&T, stating only that "AT&T's Initial Brief fully explores the relevant issues concerning the [HAI] cost study and demonstrates that it accurately identifies Verizon's forward-looking economic costs to provide [UNE's] in New York."[43]

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[40] Id., p. 3.

[41] WorldCom states in this regard "it is increasingly clear that the 100 percent fiber fed/[next generation digital loop carrier] broadband network construct adopted by the Commission in Phase 1, and proposed here, will result in enormous savings, particularly with respect to network operation costs." (WorldCom's Initial Brief, p. 8.)

[42] Id., p. 9.

[43] Id., p. 1.

Rhythms/COVAD

Asserting that "this proceeding presents the New York Public Service Commission with the opportunity to bring to fruition the pro-competitive policies it has adopted over the years,"[44] Rhythms/COVAD, which treat primarily DSL-related issues, warn that these pro-competitive efforts would be defeated by a failure to price network elements at cost-based competitive levels. They say that Verizon's study is methodologically flawed and incorporates overstated cost estimates that will price competitors out of the market. In particular, they charge that Verizon's study fallaciously posits two separate networks--one for digital subscriber line services and one for all other services; as a result, the charges that apply to DSL competitors are neither efficient nor forward-looking. They assert as well, among other things, that Verizon's study fails to take proper account demand for DSL services; that its loop conditioning charges are designed to recover work that would not occur in a forward-looking environment; and that its loop qualification charges grow out of a failure to allow its competitors direct access to its loop qualification data base.

FairPoint

Addressing itself only to questions of rate deaveraging, FairPoint notes that the loop rates in Manhattan and a few other large urban areas have helped to start local exchange competition. It expresses concern about the absence of such competition in the remainder of the state, where loop rates are much higher under existing loop rate deaveraging. It offers a series of alternative rate structures under which "the rural rate band would ... apply to truly rural areas and not to the downtown areas of smaller cities and towns,"[45] thereby intending

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[44] Rhythm/COVAD's Initial Brief, p. 1.

[45] FairPoint's Initial Brief, p. 2.

to extend the benefits of local exchange competition to a broader segment of the state.

CTTANY

CTTANY's 50-page brief is directed to Verizon's proposal to increase conduit rental rates substantially--by between 621% and 729% for main conduit rental, and between 449% and 1,083% for subsidiary conduit rental.[46] It urges rejection of the forward-looking costing method responsible for those increases and adoption, instead, of the FCC's formula based on historic costs. (Conduits are not a UNE and are not subject to mandatory TELRIC pricing) In CTTANY's view, doing so would insure fair facilities-based competition despite Verizon's "monopoly ownership and control of distribution and transmission facilities in New York"; provide Verizon a reasonable return on its investment; bring state and federal regulation of conduit rental and pole attachments into harmony; and alleviate the administrative burden that CTTANY sees as associated with Verizon's proposed method.

As noted, conduit rental rates will be the subject of a separate recommended decision.

Z-Tel

Asserting that UNE rates properly based on TELRIC are essential to the continued development of local exchange competition in New York, Z-Tel criticizes several specific aspects of Verizon's studies. In particular, it urges the Commission to reject usage-sensitive charges for unbundled local switching, contending that Verizon incurs no usage-sensitive costs in providing unbundled local switching to itself or its competitors.

Lightpath

[46] CTTANY's Initial Brief, p. 1.